

## SENATE BILL NO. 458

INTRODUCED BY M. WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PRIOR AUTHORIZATION FOR ADMISSION TO MONTANA STATE HOSPITAL; CLARIFYING RESPONSIBILITY FOR COSTS FOR ALTERNATIVE PLACEMENTS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE TECHNICAL ASSISTANCE TO COUNTIES ON THE DEVELOPMENT OF PLANS AND TO DEVELOP A REIMBURSEMENT SYSTEM THAT PROVIDES INCENTIVES TO PREVENT INAPPROPRIATE ADMISSIONS TO MONTANA STATE HOSPITAL; PROVIDING PROCEDURES FOR DISCHARGE OF AN INAPPROPRIATE PLACEMENT IN MONTANA STATE HOSPITAL; PROVIDING THAT A RESPONDENT MAY BE DETAINED IN FACILITIES THAT PROVIDE SUPERVISION, SAFETY, AND SECURITY; AND AMENDING SECTIONS 53-21-124, 53-21-127, 53-21-129, 53-21-163, 53-21-180, AND 53-21-181, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.**    **Section 1. Prior authorization for admission to state hospital.** (1) Upon examination by a professional person to determine whether a respondent requires a commitment to Montana state hospital pursuant to 53-21-127 or an emergency detention pursuant to 53-21-129, the professional person shall consult with a designated mental health professional at the state hospital to determine that:

(a) the respondent meets the admission criteria, adopted by rule, based on the type and level of care, and that the state hospital is the least restrictive and most appropriate placement for treatment of the respondent; and

(b) the state hospital has the capacity to admit the respondent for treatment.

(2) If the admission of the respondent to the state hospital is determined to not be appropriate, the department of public health and human services shall work with the professional person and the court to find an appropriate alternative placement for the respondent to receive treatment. Identification of an alternative placement other than the state hospital does not obligate the public mental health system to fund the provision of services, but does not preclude other program responsibility for providing appropriate services. Costs for an emergency evaluation of the respondent for whom admission to the state hospital

1 is not appropriate are the responsibility of the county seeking admission.

2 (3) If admission of the respondent to the state hospital is determined to be appropriate but the  
3 state hospital does not have the capacity to admit the respondent, the public mental health system is  
4 obligated to fund the provision of services in an alternative placement.

5 (4) If admission of the respondent to the state hospital is determined to be appropriate and the  
6 state hospital has agreed to accept the respondent for treatment, the professional person shall certify to  
7 the court that the conditions for admission to the state hospital have been met, as required in  
8 53-21-127(2)(e)(viii).

9 (5) The department shall adopt rules that specify the criteria for admission to the state hospital  
10 based upon the appropriate type, level, and duration of care that is provided at the state hospital. The  
11 department shall ensure that the rules reflect the provisions in the Emergency Medical Treatment and  
12 Active Labor Act, as provided in 42 U.S.C. 1395dd, and relevant federal rules and regulations.

13

14 **NEW SECTION. Section 2. Development of local plans to prevent inappropriate admissions to**  
15 **state hospital.** (1) The department of public health and human services shall provide technical assistance  
16 to local governments, human service agencies, and individuals in order to develop a plan for providing  
17 community-based mental health services to meet local needs and to serve individuals at home or in a  
18 community close to home whenever possible. The department shall concentrate on counties that have  
19 a higher than average admission rate to Montana state hospital.

20 (2) The department shall facilitate community-based efforts that may include but are not limited  
21 to mental health professionals, community mental health centers, licensed mental health centers, inpatient  
22 treatment facilities, county commissioners, county attorneys, defense counsel, consumers of mental health  
23 services, family members of consumers, relevant state agencies or programs, and other interested parties  
24 to develop a plan for services and funding that divert commitments to and emergency detention at the  
25 state hospital whenever possible.

26 (3) The department shall develop a reimbursement system that provides incentives for the  
27 development and use of appropriate community services in order to discourage inappropriate placement  
28 at the state hospital.

29 (4) The department shall report to the legislature the numbers of individuals and the types of  
30 services that were needed for individuals who were determined to be inappropriate placements at the state

1 hospital and the types of alternative placements to which these individuals were referred or determined  
2 to need.

3

4 **Section 3.** Section 53-21-124, MCA, is amended to read:

5 **"53-21-124. Detention of respondent pending hearing or trial -- jail prohibited.** (1) The court may  
6 not order detention of a respondent pending the hearing unless requested by the county attorney and upon  
7 the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for  
8 the respondent may then request a detention hearing, which must be held ~~forthwith~~ immediately.

9 (2) In the event of detention, the respondent must be detained in the least restrictive setting  
10 necessary to ~~assure his~~ ensure the respondent's presence and ~~assure his~~ to ensure the respondent's safety  
11 and the safety of others as provided in 53-21-120. Except as provided in subsection (4), a respondent may  
12 be detained in a facility for which the supervision, safety, and security of the respondent are ensured,  
13 preferably in the respondent's county of residence.

14 (3) If the respondent is detained, ~~he~~ the respondent has the right to be examined additionally by  
15 a professional person of ~~his~~ the respondent's choice. Unless objection is made by counsel for the  
16 respondent, ~~he~~ the respondent must continue to be evaluated and treated by the professional person  
17 pending the hearing.

18 (4) A respondent may not be detained in a jail or other correctional facility pending a hearing or  
19 trial to determine whether the respondent should be committed to a mental health facility."

20

21 **Section 4.** Section 53-21-127, MCA, is amended to read:

22 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not  
23 suffering from a mental disorder or does not require commitment within the meaning of this part, the  
24 respondent must be discharged and the petition dismissed.

25 (2) (a) If it is determined that the respondent is suffering from a mental disorder and requires  
26 commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The  
27 disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth  
28 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and  
29 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

30 (i) commit the respondent to the state hospital, subject to the provisions of [section 1], for a

1 period of not more than 3 months;

2 (ii) commit the respondent to a community facility, program, or course of treatment for a period  
3 of not more than 3 months;

4 (iii) order the respondent to be placed in the care and custody of a relative or guardian or some  
5 other appropriate place other than an institution;

6 (iv) order outpatient therapy; or

7 (v) make some other appropriate order for treatment.

8 (b) A treatment ordered pursuant to this subsection may not affect the respondent's custody or  
9 course of treatment for a period of more than 3 months.

10 (c) In determining which of the alternatives in subsection (2)(a) to order, the court shall choose  
11 the least restrictive alternatives necessary to protect the respondent and the public and to permit effective  
12 treatment. The court may authorize the chief medical officer of a facility or a physician designated by the  
13 court to administer appropriate medication involuntarily if the court finds that involuntary medication is  
14 necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not  
15 be involuntarily administered to a patient unless the chief medical officer of the facility or a physician  
16 designated by the court approves it prior to the beginning of the involuntary administration and unless, if  
17 possible, a medication review committee reviews it prior to the beginning of the involuntary administration  
18 or, if prior review is not possible, within 5 working days after the beginning of the involuntary  
19 administration. The medication review committee must include at least one person who is not an employee  
20 of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must  
21 receive adequate written notice of the date, time, and place of the review and must be allowed to appear  
22 and give testimony and evidence. The involuntary administration of medication must be again reviewed  
23 by the committee 14 days and 90 days after the beginning of the involuntary administration if medication  
24 is still being involuntarily administered. The mental disabilities board of visitors and the director of the  
25 department of public health and human services must be fully informed of the matter within 5 working  
26 days after the beginning of the involuntary administration. The director shall report to the governor on an  
27 annual basis.

28 (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to  
29 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court  
30 may require commitment only to a community facility and may not require commitment at the state

1 hospital.

2 (e) In ordering commitment pursuant to this section, the court shall make the following findings  
3 of fact:

4 (i) a detailed statement of the facts upon which the court found the respondent to be suffering  
5 from a mental disorder and requiring commitment;

6 (ii) the alternatives for treatment that were considered;

7 (iii) the alternatives available for treatment of the respondent;

8 (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

9 (v) the name of the facility, program, or individual to be responsible for the management and  
10 supervision of the respondent's treatment;

11 (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was  
12 chosen from among other alternatives; ~~and~~

13 (vii) if the order includes involuntary medication, the reason involuntary medication was chosen  
14 from among other alternatives; and

15 (viii) if the order includes commitment to the state hospital, the criteria provided for in [section 1]."  
16

17 **Section 5.** Section 53-21-129, MCA, is amended to read:

18 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists,  
19 a peace officer may take any person who appears to have a mental disorder and to present an imminent  
20 danger of death or bodily harm to the person or to others into custody only for sufficient time to contact  
21 a professional person for emergency evaluation. If possible, a professional person should be called prior  
22 to taking the person into custody.

23 (2) If the professional person agrees that the person detained is a danger to the person or to others  
24 because of a mental disorder and that an emergency situation exists, then the person may be detained and  
25 treated until the next regular business day. At that time, the professional person shall release the detained  
26 person or file findings with the county attorney who, if the county attorney determines probable cause to  
27 exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's  
28 residence. In either case, the professional person shall file a report with the court explaining the  
29 professional person's actions.

30 (3) The county attorney of a county ~~may~~ shall make arrangements with ~~a~~ one or more federal,

1 state, regional, or private mental ~~facility or health facilities or hospitals~~, with a mental health facility, ~~or~~  
2 with a facility pursuant to 53-21-124, in a county for the detention of persons held pursuant to this  
3 section. If an arrangement has been made with a facility that does not, at the time of the emergency, have  
4 a bed available to detain the person at that facility, the person may, subject to the provisions of [section  
5 1], be transported to the state hospital for detention and treatment as provided in this part. This  
6 determination must be made on an individual basis in each case, and the professional person at the local  
7 facility shall certify to the county attorney that the facility does not have adequate room at that time.

8 (4) However, before a person is transferred to the state hospital under this section, the ~~state~~  
9 ~~hospital must be notified prior to transfer and shall state that a bed is available for the person~~ professional  
10 person shall follow the procedures provided for in [section 1]."

11  
12 **Section 6.** Section 53-21-163, MCA, is amended to read:

13 **"53-21-163. Examination following commitment.** (1) (a) No later than 30 days after a patient  
14 is committed to a mental health facility, the professional person in charge of the facility or ~~his appointed,~~  
15 the professional person's professionally qualified agent shall reexamine the committed patient and shall  
16 determine whether ~~he~~ the patient continues to require commitment to the facility and whether a treatment  
17 plan complying with this part has been implemented.

18 (b) If the patient no longer requires commitment to the facility in accordance with the standards  
19 for commitment, ~~he~~ the patient must be released immediately unless ~~he~~ the patient agrees to continue with  
20 treatment on a voluntary basis. The patient must be referred to appropriate aftercare services.

21 (c) If for sound professional reasons a treatment plan has not been implemented, this fact ~~shall~~  
22 must be reported immediately to the professional person in charge of the facility, the director of the  
23 department, the mental disabilities board of visitors, and the patient's counsel.

24 (2) A release of a patient within an initial 10-day period is not subject to the discharge plan  
25 provided for in 53-21-180 or the 5-day notice provision required under 53-21-181. However, the state  
26 hospital shall send notice of the release immediately to the county attorney of the county that committed  
27 the patient to the state hospital."

28  
29 **Section 7.** Section 53-21-180, MCA, is amended to read:

30 **"53-21-180. Discharge plan.** (1) Each patient admitted as an inpatient to a mental health facility

1 must have an individualized discharge plan developed within 10 days after admission. The discharge plan  
2 must be updated as necessary. Each individualized discharge plan must contain:

3 ~~(1)(a)~~ an anticipated discharge date;

4 ~~(2)(b)~~ criteria for discharge;

5 ~~(3)(c)~~ identification of the facility staff member responsible for discharge planning;

6 ~~(4)(d)~~ identification of the community-based agency or individual who is assisting in arranging  
7 postdischarge services;

8 (e) a referral to a provider of appropriate mental health services;

9 ~~(5)(f)~~ referrals for financial assistance needed by the patient upon discharge; and

10 ~~(6)(g)~~ other information necessary to ensure an appropriate discharge and adequate postdischarge  
11 services.

12 (2) Each patient who is discharged from the state hospital must receive appropriate referrals to  
13 aftercare and postdischarge services."

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15 **Section 8.** Section 53-21-181, MCA, is amended to read:

16 **"53-21-181. Discharge during or at end of initial commitment period -- ~~patient's right~~ department**  
17 **obligation to provide referral.** (1) At any time within the 3-month period provided for in 53-21-127(2), the  
18 patient may be discharged on the written order of the professional person in charge of ~~him~~ the patient. In  
19 the event the patient is not discharged within the 3-month period and if the term is not extended as  
20 provided for in 53-21-128, ~~he shall~~ the patient must be discharged by the facility at the end of 3 months  
21 without further order of the court. ~~Notice~~ Unless the patient is discharged within the first 10 days of  
22 commitment pursuant to 53-21-163, notice of the discharge ~~shall~~ must be filed with the court and the  
23 county attorney at least 5 days prior to the discharge.

24 (2) Upon being discharged, the department shall provide each patient ~~has a right to be referred,~~  
25 ~~as an~~ appropriate; referral, as provided in the discharge plan pursuant to 53-21-180, to other providers  
26 of mental health services."

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28 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified  
29 as an integral part of Title 53, chapter 21, part 6, and the provisions of Title 53, chapter 21, part 6, apply  
30 to [sections 1 and 2].

31 - END -